

1895-019 Chancery Cause: F. B. Cox + wife vs. Louisville + Nashville Railroad Co.
Lee Co.

CA - Contract Dispute
T - Property
Transportation

- Deed

AUG 20 1889

JONESVILLE,
LEE CO.

To The Hon. H. S. K. Morison
Judge of the Circuit Court of
Lee County Virginia;

Your Complainants, F. B. Leax
and Mary Leax his wife who
humbly Complaining would re-
spectfully represent that, on the
3^d. day of October 1889, they made
and executed to The Lewisville and
Bashville Rail Road Company a
Corporation doing business under
the laws of Virginia, a deed of
Conveyance, for a right of way
over and through the lands of your
female Complainant, situated on
Dry Branch in Lee County Virginia.
The exact distance and amount of
said land and the conditions upon
which it was made are fully
set out & shown by said deed, a
copy of which is herewith filed
and is prayed to be treated as part
hereof. Marked "D"

By an inspection of which it
will be seen that in Consider-
ation of said Conveyance, said
defendant Company should
erect and maintain in good order
necessary suitable and convenient
Crossings and Cattle guards over
the said road (Rail Road) and it
was stipulated, the grantee in the

1 Construction of said road (Rail Road
2 was not to obstruct the Channel of
3 Dry Branch so as to Cause said
4 Branch to flow over the lands of the
5 Grantors - These Conditions, agreements,
6 reservations and Contracts are am-
7 ong other this fully & clearly expressed
8 upon the face of said deed.

9 Your Complainant, allege that this
10 land is the land of the female Com-
11 plainant Subject to the use and en-
12 joyment of the male plff, who
13 intermarried with the female prior
14 to 1860, and has since been alive by
15 her, and so has the use thereof dur-
16 ing the marriage and the Contingent
17 right of Courtesy.

18 They allege that said Rail Road Company
19 have not made suitable and Conven-
20 ient Crossings over their road, nor in
21 fact any Crossing at all; have
22 erected no Cattle guards, and in
23 its Construction did fill up and
24 obstruct the Channel of dry branch
25 so that the water therefrom flows
26 out of its natural channel over
27 and upon the plffs land, destroy
28 the crops of grain, grass & herbage &
29 washes away the land and greatly
30 damages said farm. They allege that
31 this is caused by said Company filling
32 up & obstructing in its Construction the

1 said Channel of dry branch.

2 They allege that a large portion of their
3 land lies on the South Side of said
4 rail road, that they live on the north
5 side, and that Suitable and Conven-
6 ient Draining are absolutely neces-
7 sary to the use & enjoyment of their
8 property. Their timber & firewood
9 lies mostly on the South Side and op-
10 posite their dwelling and that they
11 have been put to great trouble
12 & expense to get around over & across
13 said rail road. That Suitable Cut-
14 the grounds are necessary to the proper
15 use of said farm and have never
16 been made.

17 They are advised that said Company
18 having accepted said deed and con-
19 structed its road thereon, are bound
20 in law to fully perform the Contract
21 upon its part, the same having
22 been fully complied with upon the
23 part of your Complainant.

24 The overflow of said dry branch
25 cuts & washes away a small portion
26 of your Complainant's land every day
27 when the waters are flush & out of
28 the old Channel, that such damage
29 while of itself small, constantly
30 works an injury to your Com-
31 plainant, and the resort to a Court
32 of law to correct the same would

1 Cause
2 ~~causing~~ litigation and ruinous expense
3 upon your Complainant, they hereto-
4 fore instituted their suit upon the Com-
5 side of this Court for the damage
6 then done them, up to that time by
7 said overflow & filling up of said
8 Channel the covering up of a val-
9 uable spring &c. &c. for which they
10 recovered the larger sum of \$250.00
11 Since that time, no effort has been
12 made by said Company to ~~fill~~
13 clear cut said obstructed Channel
14 but it remains as before said suit
15 and much damages has since the
16 institution of that suit been done
17 by the overflow of water from said
18 dry branch over through & upon
19 your Complainant's land. Moreover
20 said Company has since that time
21 thrown on & upon & over your plott land
22 large quantities of rock & debris so
23 that your Complainant believe it is
24 the settled purpose of said Company
25 to annoy & harass and injure them
26 by forcing them to continually
27 litigate about the small damages
28 daily occurring but which in the
29 end will be serious enough.

30 Your Complainant made said deed
31 in good faith & have fully complied
32 with it, and they pray that said Com-
pany be required to do and perform its
part.

1 The object of this bill is therefore
 2 to have said Contract set out
 3 in said deed fully performed
 4 upon the part of said defend-
 5 ant Company. To have the Chan-
 6 nel of dry Creek so cleared of
 7 obstructions that the waters thereof
 8 will flow through the same, and
 9 not over and upon your Complain-
 10 ant's land, to have suitable conven-
 11 ient and proper crossing made
 12 from the west side of said farm
 13 to the east side and vice versa. or on
 14 said Company's failure to do and per-
 15 form its part of said Contract that
 16 said deed of conveyance be set
 17 aside held void and created for
 18 naught; and in any event to have
 19 the damages done your Complainant's
 20 land by the wash and overflow of
 21 dry branch since the institution of
 22 their suit at law ascertained and
 23 paid to them. And if in anywise
 24 mistaken as to their relief herein
 25 herein specifically prayed for, that
 26 that they have all such other further
 27 and general relief as the merit of
 28 their case entitles them to. Many
 29 Commonwealth Supra is our own

30 A. L. Ordinaire
 31 p. g.
 32

F. B. Leavitt

Bill Chey

L. & N. R. R. Co

1893 1st Sept. Rules Bld filed

Spa Expd & Decree nisi

" 2nd Sept Rules d. W. Confd
& Cause set for hearing
by Plaintiff

Plffs Costs

\$6.41

\$1.50

\$6.91

Def's Costs

\$2.65

attys \$5.00

Exp 25

\$17.90

Nov Term 1895 Decree
final Chey Ord Bk 5
Page 248

This decree is accepted to become part
of the record. Attest
J. B. Leavitt

To the Hon.H.S.K.Morrison, Judge of the Circuit Court of Lee County:

The demurrer and answer of the Louisville and Nashville Railroad Company, a corporation doing business under and by virtue of the laws of Virginia, to a bill exhibited against it in this Honorable Court by F.B.Cox and Mary Cox, his wife.

Respondent says that the complainant's bill is not sufficient in law to call upon it to answer in this Honorable Court, but that there is good cause of demurrer thereto, and it demurs accordingly, and pray judgement &c.

And not waiving said demurrer but relying and insisting thereon, should other and further answer be required of it, answering it says, that it is true that on the third day of October 1889, said Complainants made, executed and delivered to this Respondent a deed of conveyance for a strip of land for right of way, through the lands of the female Complainant situated on Dry branch in Lee County Va. Said deed shows the amount of land conveyed and the length of the line of railroad through said tract of land, and the conditions and considerations for making the same.

It is further true that one of the considerations of said deed was that said Company should erect and maintain in good order necessary, suitable and convenient crossings and cattle guards over said road, and it was further stipulated in said deed that the road was not to be so constructed as to obstruct the channell of Dry branch so as to cause the said branch to flow over the lands of said complainants.

Respondent supposes that said tract of land belongs to the female Complainant, but as to whether said land is subject to the use and enjoyment of the male Complainant, respondent is not advised, it is true that he is her husband and has by her issue born alive, and is therefore entitled to a contingent right of curtesy in said tract of land.

Respondent emphatically denies the allegation, that it has not made suitable, convenient, necessary crossings over its track where it passes through the tract of land owned by said complainant. But on the contrary, respondent avers that it has made for the use of said Complainants at the most suitable and convenient point on its road where it passes through said tract of land, a good and sufficient crossing, that it has and is maintaining the same in good order and repair. Respondent will now show your Honor that the land of Complainants, on each side of

respondent's right of way, is very steep and rough and that that there is but one point at which a crossing could be put in that would be either convenient or necessary to Complainants, and at this point respondent long since erected and put in said crossing.

It is true that no cattle guards have been erected by respondent ~~over~~ over its track where it runs through Complainants' land, and respondent denies that any are necessary, because said Complainants have no part of the lands through which said railroad runs, enclosed, the County ~~red~~ road lies between said railroad and any enclosure of the plaintiffs.

Complainants, if they wanted cattle guards, have not pursued the ~~lea~~ legal and proper course; the laws of Virginia prescribe a very plain and at the same time a very efficacious course to be pursued by a land owner desiring cattle guards erected upon his lands, this course has not been pursued by said Complainants, and respondent is advised that the provision of said deed, requiring respondent to erect suitable and necessary cattle guards does not do away with the requirements of the statute to determine their necessity, in other words, that the provision in said deed with reference to crossings and cattle guards, is exactly in accordance with the statute and confers no greater or superior rights and no other remedies, than is conferred by the law itself.

Respondent denies, that, in the construction of its road, it filled up and obstructed the channel of Dry branch so that the water therefrom flows out of its natural channel over and upon the lands of the complainants, thereby destroying the crops, grain, grass, and herbage of the complainants; and it further denies that the said branch has been so obstructed by it, in the construction of its road, as to cause any washing away of the lands of the complainants either in times of freshets or at any other time, and respondent avers that if any rock or debris of any kind was thrown into said branch by the contractors during construction, that they were removed long before this suit was instituted. But if said channel of Dry branch was in any way filled up or in any way obstructed by the construction of said railway, then respondent says that full compensation has been made for the same and for all injury that has or can result therefrom, for respondent says that the complainant, Mary E. Cox, heretofore, to-wit, at the first October Rules, 1892,

filed her declaration in case against this respondent alleging among other things, that this respondent had ditched, filled up, and turned out of its natural channel the said Dry branch so that in times of freshets it flowed over, in, and upon said land, close, and tenement, thereby causing the same to overflow, cut channels, and wash away the plaintiff's land. Upon this declaration the plaintiff took issue and went to trial, and at the March term, 1893, judgement was rendered for said plaintiff, Mary E. Cox, for \$230.00. So respondent avers that all damages resulting from the filling up or in any way obstructing the said Dry branch has been heretofore adjudicated and fully compensated by said judgement. And respondent further avers that the County road is located and constructed between said Dry branch and the land which complainants claim is being washed away and injured by said Dry branch, and respondent further avers that complainants' lands are no more subject to injury from freshets in Dry branch now than they were before the railroad was constructed.

Respondent is informed that a small portion of complainant's land lies on the South side of the railroad: that upon this land there is some timber and firewood: and that a crossing is necessary to enable the complainants to get the same over said railroad to their dwelling house which is on the North side thereof. This crossing has been put in by respondent.

Respondent denies that the overflow of Dry branch when the waters are flush washes away any more of complainants' ^{land} now than it did before said railroad was constructed. It may be true that said branch when the waters are flush and out of bank washes away small portions of complainants land, for which the railroad is in no wise responsible, because the same thing occurred before said road was constructed. And respondent is advised that there is a point one hundred yards further up the branch than where it approaches respondent's embankment, where said branch will run over its bank and on to complainant's land with a much smaller rise in the water than will be required to overflow said branch where it runs along the embankment of said railroad.

Respondent says that it is true that the female complainant heretofore instituted her suit on the law side of this Honorable Court, claiming damages on account of the filling up and turning out of its

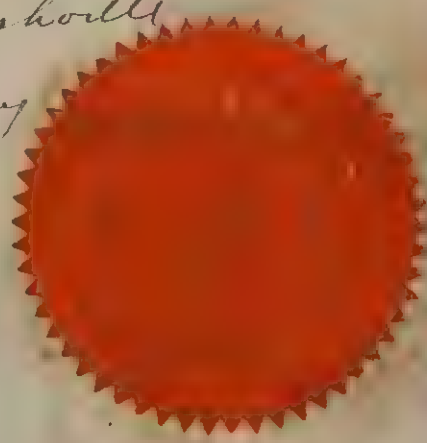
natural channel the said Dry branch so that in times of freshets it flowed over in and upon said land causing the same to wash away &c., for which they recovered not "the meagre sum of \$250.00;" but the extravagant sum of \$230.00. And respondent avers that said sum is a full satisfaction of all injuries resulting to complainants land by reason of the construction of said railroad, and it pleads said suit and recovery in bar of the same in so far as Dry branch or any overflow from it or any injury which has or may hereafter result from the same, is embraced in this suit.

Respondent denies that it has, since the institution of said suit at law, thrown in upon and over the complainant's land large quantities of rock and debris. And respondent is at a loss to know why complainant should assert that they believe it is the settled purpose of respondent to annoy harass and injure them by forcing them to continually litigate about small damages daily occurring, unless said complainants have attributed their own thoughts, desires and purposes to respondent. And unless the said complainants are actuated in this suit by a plain purpose, poorly disguised, of annoyance and blackmail, respondent is unable to account for the institution of this suit.

And here averring that respondent has done everything incumbent upon it to be done, and left nothing undone required by said deed, or that could be reasonably asked under the laws of Virginia, and here denying every allegation contained in said bill, not herein before denied or admitted it prays to be hence dismissed with its costs.

*Louisville & Nashville
Rail Company*

*C. W. Lumsden
Atty.*



Louisville & Nashville R R Co

ans. $\frac{4}{3}$ Answer

F. B. Cox. & wife

[illegible]

Letter to Mr. Campbell

✓ 10/10/10

F.B.Cox, ~~Admrx~~ and wife

Plaintiffs

vs.

In Chancery.

L.& N.R.R.Co.,

Defendant.

This cause came on again this day to be ~~re~~ heard upon the bill of complainant and exhibit therewith, the demurrer and answer of the defendant to said bill, joinder in said demurrer and general replication to said answer and was argued by counsel

On consideration whereof, the court is of opinion that the complainant's bill does not show a sufficient cause of action. It is therefore adjudged, ordered and decreed that said demurrer be sustained and the complainant's bill dismissed; that the defendant recover its costs, for which execution may issue; and that the cause be stricken from the docket.

F. B. Cox & wife
vs { Decree final.

L. & N. R. R. Co.

Q. B. 7-248

Enter this decree
Nov. 8th 1895-

F.B.Cox and Wife

VS

In Chancery

Louisville and Nashville Railroad Co.

On motion of the defendant leave is given it to file its an demurrer and and answer in this case and the same are accordingly filed and the said Complainants joined in said demurrer and replied generally to said answer and the cause is continued.

H. B. Cox & wife
vs $\frac{2}{3}$ D. C. Cox

L & N R R Co

Entered Ch O. B. p 543.
Nov. 1st 1893.

Enter This decree

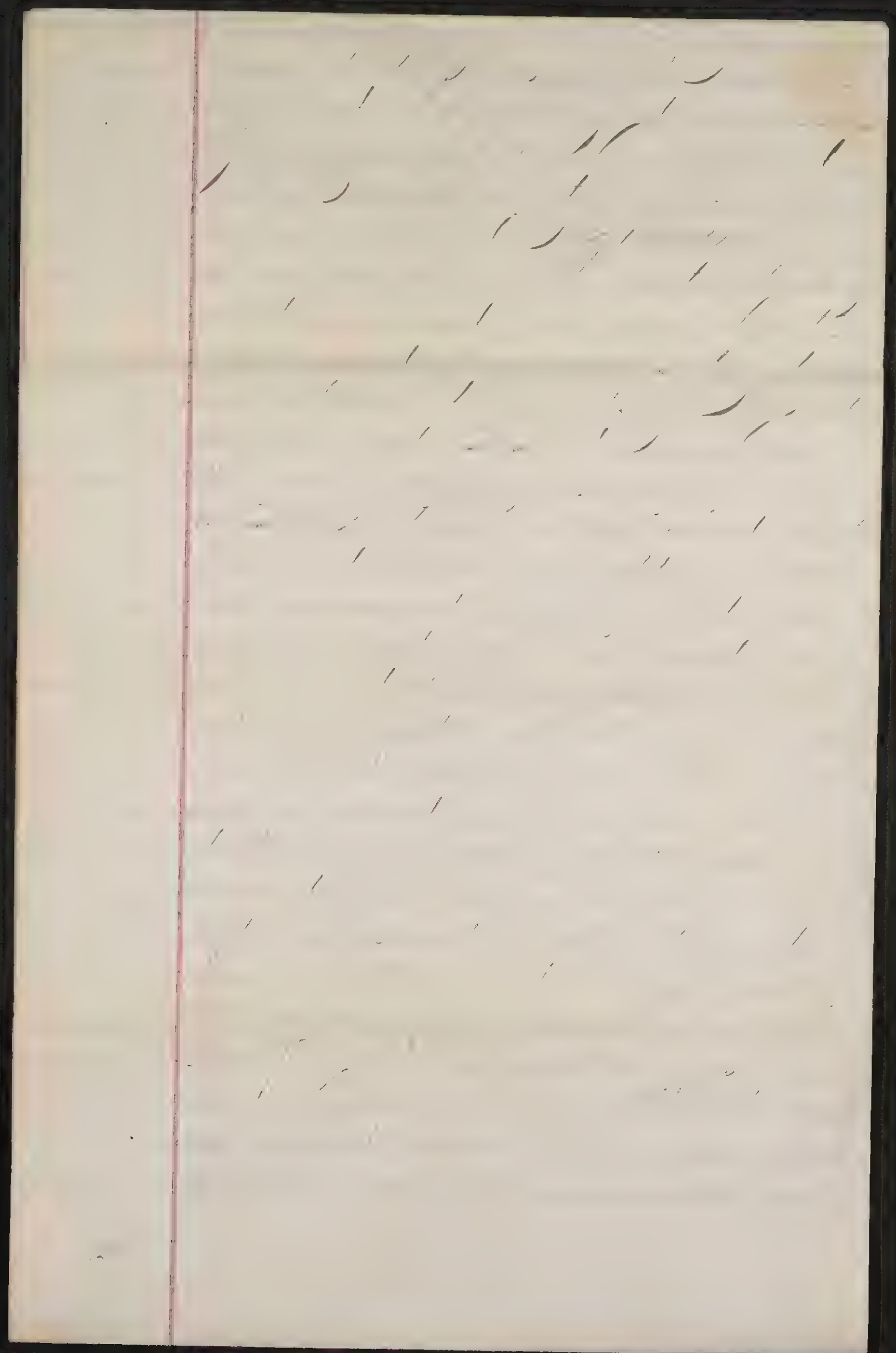
of L & N R R Co
Nov. 1st 1893

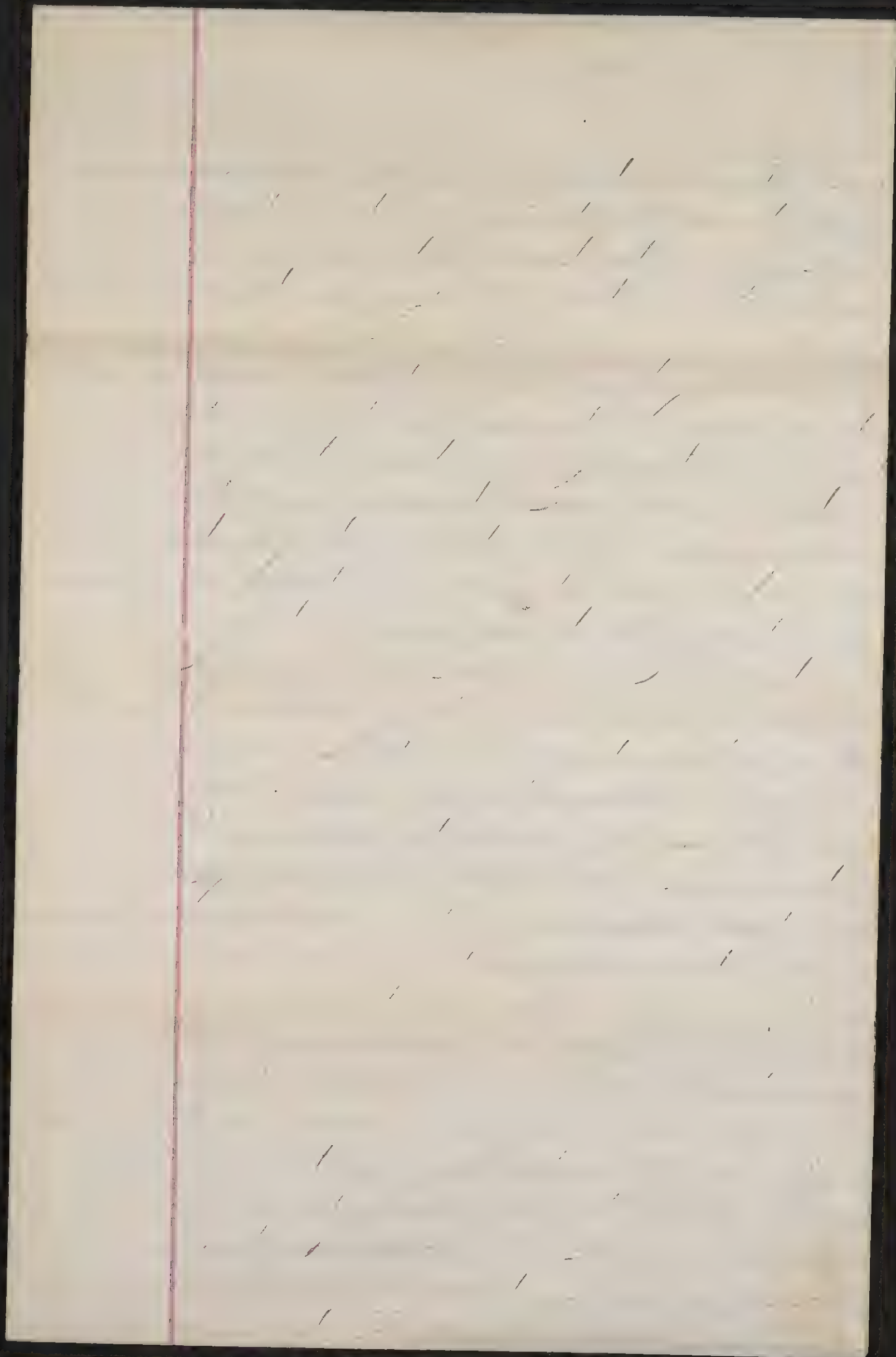
A. L. PRIDE
ATTORNEY - AT - LAW

AUG 20 1898

LEE CO. E.

GATE CITY,
SCOTT CO.





"B"

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*Louisville and Nashville
Rail Road Company a body corporate under
& by Virtue of the laws of Virginia and Kentucky*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said
Court on the *first* Monday in *October*, 189*3*, to answer a bill in Chancery,
exhibited against *It* in our said court by *D. B. Willis*

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *21st* day of *September* 189*3*, and in the 11*8th* year of
the Commonwealth.

A. B. Munsey Clerk.

D. H. Willis

vs. {

SUBPOENA
IN CHANCERY.

The L & N R.R. Co

A. L. Pridemore p. q.

To 1st October Rules,

Circuit Court.

There being no president cashier, treasurer, general superintendent or any of the directors of the Louisville & Nashville Railroad Company found in or resident of my County I executed the within summons by delivering a true copy of the same on the 21st day of Sept 1883 at 5 o'clock P.M. to J. A. Brownlee depot agent of said Railroad Company at its depot at Lexington Ga. in the said County of Lee & State of Virginia the said J. A. Brownlee being a resident of said County & said depot being the place of business of said company and of said J. A. Brownlee agent as aforesaid this Sept the 21. 1883

L. M. Wade. D. S. for C. E. Flannery. S. L. C.

The Commonwealth of Virginia.

To The Sheriff of Lee County Greeting:

WE COMMAND YOU TO SUMMON

*Louisville & Nashville Rail Road
Company a body Corporate under and by
by the laws of Ky & Virginia doing business
in Virginia*

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House, on the first Monday in.....

September.....next, being rule day to answer a bill in Chancery exhibited in our said Court against
Et.....by *F. B. Lee & Mary Lee*
his Wifes

And have then and there this writ.

A. B. Munsey
Witness, *J. A. G. Hyatt*, Clerk of said Court at the Courthouse.

This *14th* day of *August* 18*93* in the 11*8th* year of the Commonwealth.

A. B. Munsey Clerk.

A Copy Teste..... Clerk.

ALP

F. B. Cox. et al
vs
Spa In Chy
L + N. R. R. Co

To 1st Sept Rules 1893

There being no president, cashier, treasurer, general superintendent or any of the directors of the Louisville and Nashville Railroad company found in or resident of any county I executed the within summons by delivering a true copy of the same on the 17 day of Aug 1893 to J. A. Brownlee depot agent of said Railroad company at its depot at Lexington in the said county of Lee and State of Virginia the said J. A. Brownlee being a resident of said county and said depot being the place of business of said company and of said J. A. Brownlee agent as aforesaid

This Aug 18. 1893 C. E. Flannery. J. L. C.